

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

International Paper Company,)	CASE NO. 5:06 CV 2058
)	
Plaintiff,)	
)	
v.)	JUDGE DONALD C. NUGENT
)	
Escher-Grad Technologies, Inc.,)	
)	
Defendant.)	<u>MEMORANDUM OPINION</u>
)	<u>AND ORDER</u>

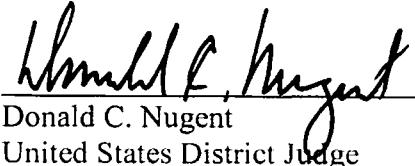
Before the Court is Defendant Escher-Grad Technologies Inc.'s Motion for Relief from Judgment, pursuant to Fed. R. Civ. Pro. 60(b)(1) and/or (3). (ECF # 20). Having reviewed the arguments by both parties and the applicable law, the Court hereby denies Defendant's motion. This Court granted a default judgment against the Defendant on November 28, 2006 for failure to answer or otherwise participate in this action. (ECF #16). Three months later, Defendant filed its Motion to set aside the default judgment.

A Rule 60(b) motion may be granted for (1) mistake, inadvertence, surprise or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud, misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or

discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. Fed. R. Civ. Pro.. 60(b). In this case Defendant relies on grounds (1) and (3), claiming that Plaintiff led it to believe that all issues between the parties had been resolved and that Defendant did not need to answer or take any other action in this case. Defendant has offered no credible evidence to support its claims.

Plaintiff, however, as part of its Memorandum in Opposition has submitted evidence in the form of an affidavit and a string of emails between the parties which clearly shows that the Defendant was aware of the on-going proceedings; was aware that the claims raised in the Complaint were not all resolved; was aware that the Plaintiff had filed an application for Default Judgment; and was encouraged by the Plaintiff to retain counsel and respond to the Complaint. (ECF # 25). Therefore, Defendant has failed to show any mistake, excusable neglect, or misconduct of any kind by the adverse party. Nor has it shown any other reason justifying relief from the judgment. It appears clear that Defendant, though aware of the proceedings, consciously chose not to respond to the Complaint. The Default Judgment against the Defendant for \$251,327.20 was proper and it shall stand. (ECF # 16). The Order staying execution of that judgment, which was issued by this Court on March 10, 2007, is hereby dissolved. (ECF # 26).

IT IS SO ORDERED.


Donald C. Nugent
United States District Judge

Date:

June 1, 2007